

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

VIACELL, INC.,)	
Plaintiff,)	
)	Civil Action No. 04-1335
v)	
)	JURY TRIAL DEMANDED
PHARMASTEM THERAPEUTICS, INC.,)	
Defendants.)	

MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, plaintiff ViaCell, Inc (“ViaCell”) moves for entry of a Preliminary Injunction against defendant PharmaStem Therapeutics, Inc (“PharmaStem”). ViaCell seeks this preliminary injunction pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, for PharmaStem’s threatened and actual violations of Section 1 of the Sherman Act, 15 U.S.C. § 1; and in addition pursuant to the Massachusetts Unfair and Deceptive Trade Acts and Practices statute, Mass. Gen. Laws Chapter 93A, §§ 2 and 11. Specifically, ViaCell asks that the Court enter an Order that.

- (a) PharmaStem is enjoined from soliciting, advertising, promoting, signing, or accepting any “Amnesty Agreements” with physicians or other health care providers, or soliciting, advertising, promoting, signing, or accepting any other such agreements that require health care providers to stop collecting cord blood to be stored at ViaCell or otherwise stop doing business with ViaCell;
- (b) PharmaStem is enjoined from enforcing, attempting to enforce, or threatening to enforce, any “Amnesty Agreements” already signed; and
- (c) Physicians or other health care providers who have already signed “Amnesty Agreements” cannot incur liability for infringement of any of PharmaStem’s

patents* based on any conduct occurring prior to or during the pendency of this lawsuit

A proposed form of Order is attached to this Motion.

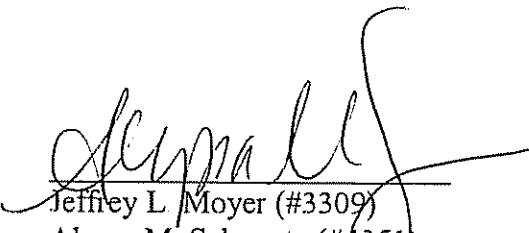
In support of this Motion, ViaCell has submitted a Memorandum of Points and Authorities and the Affidavit of Christopher Adams.

WHEREFORE, Plaintiff ViaCell asks this Court to grant this Motion for Entry of A Preliminary Injunction and issue an Order substantially in the form attached hereto

REQUEST FOR EVIDENTIARY HEARING AND ORAL ARGUMENT

ViaCell respectfully requests an evidentiary hearing on this motion and submits that oral argument will aid the Court in resolving it.

Dated: October 8, 2004



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* U.S. Patent No. 5,004,681 (the "'681 Patent"), U.S. Patent No. 55,192,553 (the "'553 Patent"), U.S. Patent No. 6,461,645 (the "'645 Patent"), U.S. Patent No. 6,569,427 (the "'427 Patent"), and U.S. Patent No. 6,605,275 (the "'275 Patent").

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Defendants)	

[PROPOSED] ORDER

HAVING CONSIDERED Plaintiff's Motion for Entry of a Preliminary Injunction, this Court hereby orders that:

- (a) PharmaStem is enjoined from soliciting, advertising, promoting, signing, or accepting any "Amnesty Agreements" with physicians or other health care providers, or soliciting, advertising, promoting, signing, or accepting any other such agreements that require health care providers to stop collecting cord blood to be stored at ViaCell or otherwise stop doing business with ViaCell;
- (b) PharmaStem is enjoined from enforcing, attempting to enforce, or threatening to enforce any "Amnesty Agreements" already signed; and
- (c) Physicians or other health care providers who have already signed "Amnesty Agreements" cannot incur liability for infringement of any of PharmaStem's patents* based on conduct occurring prior to or during the pendency of this lawsuit.

SO ORDERED this ____ day of _____, 2004

United States District Judge

* U.S. Patent No. 5,004,681 (the "681 Patent"), U.S. Patent No. 55,192,553 (the "553 Patent"), U.S. Patent No. 6,461,645 (the "645 Patent"), U.S. Patent No. 6,569,427 (the "427 Patent"), and U.S. Patent No. 6,605,275 (the "275 Patent")

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 8, 2004, I caused true and correct copies of the foregoing motion to be served upon the following counsel of record:

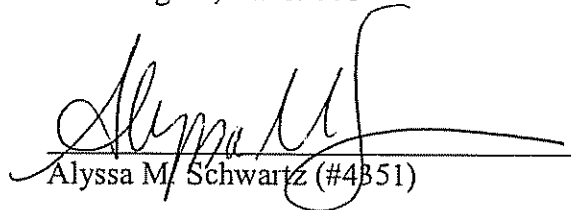
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